

U.S. Department of Homeland Security
500 12th St, SW
Washington, DC 20536

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U.S. Immigration and Customs Enforcement

MEMORANDUM FOR: Field Office Directors
Deputy Field Office Directors
Assistant Field Office Directors
ICE Health Service Corps

FROM: Thomas Homan
Executive Associate Director

SUBJECT: Identification of Detainees with Serious Mental Disorders or
Conditions

Purpose

This memorandum sets forth procedures to ensure that U.S. Immigration and Customs Enforcement (ICE) detainees who may be mentally incompetent to represent themselves in removal proceedings before the Department of Justice's Executive Office for Immigration Review (EOIR) are identified, that relevant information about them is provided to the immigration court so that an immigration judge (IJ) can rule on their competency and, where appropriate, that such aliens are provided with access to new procedures for unrepresented mentally incompetent detainees being implemented by EOIR. In concert with other actions already taken by the agency, this memorandum implements ICE Policy No. 11063.1: *Civil Immigration Detention: Guidance for New Identification and Information-Sharing Procedures Related to Unrepresented Detainees with Serious Mental Disorders or Conditions* (Apr. 22, 2013). This memorandum will also assist ICE and detention facility personnel in identifying detainees with serious mental disorders or conditions in order to assess appropriate facility placement and treatment.

Background

ICE Enforcement and Removal Operations (ERO) is committed to identifying and, during the course of their detention in ICE custody, treating detainees who have mental disorders or conditions. The identification, diagnosis and treatment of ICE detainees who have mental disorders or conditions serves to protect both the detainees and facility and agency staff. ICE's national detention standards¹ require facilities housing immigration detainees to provide the

¹ Several versions of these standards are currently in use. Although the procedures identified in this memorandum are intended to complement procedures contained in the national detention standards, any reference to "ICE's national detention standards" within this policy refers to the 2000 National Detention Standards, the 2008 Performance Based National Detention Standards, or the 2011 Performance Based National Detention Standards.

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following to all newly admitted detainees: (1) an initial medical screening, including a documented mental health screening; (2) a 14-day full medical assessment, with mental health components; and (3) timely referral for follow-up mental evaluations, diagnosis, treatment, or stabilization. Consistent with ICE Policy No. 11063.1: *Civil Immigration Detention: Guidance for New Identification and Information-Sharing Procedures Related to Unrepresented Detainees With Serious Mental Disorders or Conditions* (Apr. 22, 2013), ICE is implementing procedures to enhance the agency's assistance to EOIR in identifying detainees with serious mental disorders or conditions that may render them mentally incompetent to represent themselves in their immigration proceedings before EOIR.

For purposes of the procedures identified below only, a detainee has a "serious mental disorder or condition" if either:

- A qualified medical provider² determines the detainee:
 - has a mental disorder that is causing serious limitations in communication, memory or general mental and/or intellectual functioning (e.g., communicating, conducting activities of daily living, social skills); or a severe medical condition(s) (e.g., traumatic brain injury or dementia) that is significantly impairing mental function; or
 - is exhibiting one or more of the following active psychiatric symptoms and/or behavior: severe disorganization, active hallucinations or delusions, mania, catatonia, severe depressive symptoms, suicidal ideation and/or behavior, marked anxiety or impulsivity;

or:

- A qualified medical provider otherwise diagnoses the detainee as demonstrating significant symptoms of one of the following:
 - Psychosis or Psychotic Disorder;
 - Bipolar Disorder;
 - Schizophrenia or Schizoaffective Disorder;
 - Major Depressive Disorder with Psychotic Features;
 - Dementia and/or a Neurocognitive Disorder; or
 - Intellectual Development Disorder (moderate, severe or profound).

1. Identification Procedures

- a. In facilities staffed by the ICE Health Service Corps (IHSC), the Health Services Administrator (HSA) shall take steps to ensure the Field Office Director (FOD) is notified as soon as practicable of all detainees housed at the facilities identified as having a "serious mental disorder or condition," but no later than 72 hours after their

² For purposes of the procedures set forth in this memorandum, qualified medical providers include appropriately licensed psychiatrists, physicians, physician assistants, psychologists, clinical social workers, licensed nurse practitioners, and registered nurses.

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identification. The HSA shall also identify any detainee housed in administrative segregation on the basis of a mental illness, housed in segregation for any reason and has a mental illness, or who has been hospitalized due to a mental illness while detained in ICE custody, and notify the FOD accordingly.

- b. In facilities not staffed by IHSC, ERO field office supervisory personnel, in consultation with the IHSC Field Medical Coordinator (FMC) or an appropriately designated IHSC medical provider, shall take steps to ensure that the FOD is notified as soon as practicable by facility custody personnel and medical staff of all detainees housed at the facilities identified as having a “serious mental disorder or condition,” but no later than 72 hours after their identification. Any detainee housed in administrative segregation on the basis of a mental illness, housed in segregation for any reason and has a mental illness, or who has been hospitalized due to a mental illness while detained in ICE custody shall also be identified, and the FOD must be notified.
- c. FODs must coordinate with their local Chief Counsel to ensure that appropriate ERO field office, IHSC, and Office of the Chief Counsel (OCC) supervisory personnel meet regularly, but not less than monthly, to discuss any cases within their area of responsibility involving detainees with serious mental disorders or conditions and detainees otherwise reported pursuant to subparagraphs (a) or (b) irrespective of whether immigration proceedings are pending before EOIR.

2. Information-Sharing Procedures

- a. Once a detainee has been identified as having a serious mental disorder or condition, or otherwise identified pursuant to subparagraphs (a) or (b) of Section 1, the FMC or HSA shall request documentation of the detainee’s referral for follow-up mental evaluations, diagnosis, treatment, or stabilization pursuant to the requirements of ICE’s national detention standards. If the detainee has not been referred, ICE will request that a qualified mental health provider complete a mental health review (IHSC Form 883) or that the facility provide the detainee’s medical records within the facility’s possession as soon as practicable.
- b. All such documented mental evaluations, mental health reviews, or medical records involving detainees identified as having a serious mental disorder or condition must be provided to the local OCC mental health point(s)-of-contact.

3. Monitoring and Assessment Procedures

- a. Upon receipt of information that a particular immigration detainee has a serious mental disorder or condition, IHSC shall review facility capabilities to determine if another detention or off-site treatment facility would provide an environment better suited to the needs of the detainee. IHSC shall immediately report its conclusion to the FOD and, where appropriate, suggest the detention or off-site treatment facility

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for transfer and treatment.³ Where it is determined that the detainee is not appropriately housed, and in accordance with ICE Policy No. 11022.1: *Detainee Transfers* (Jan. 4, 2012), the FOD shall take measures to transfer the detainee as soon as practicable.

- b. If transfer is contemplated, the FOD must consult the local Chief Counsel, as appropriate, regarding coordination of the detainee's immigration proceedings and coordinate with ERO Headquarters to facilitate transfer. The FMC shall monitor the detainee's condition and report progress to the IHSC Behavioral Health Branch.
- c. Once a detainee has been identified as having a serious mental disorder or condition, IHSC and ERO field office supervisory personnel, in coordination with OCC supervisory personnel, must continue to monitor the case until removal or release.
- d. IHSC and ERO field office supervisory personnel, in coordination with OCC supervisory personnel, must report any major changes in stability to the responsible FOD and Chief Counsel as soon as practicable.

Use of Detention Services Managers (DSM)

For all facilities with DSM oversight, the DSM shall contact the FOD and the FMC if any serious mental health concerns are identified through the course of their interactions with detainees.

Access for Mental Health Examinations

When an immigration judge orders a mental health examination to assess a detainee's competency, the FOD shall ensure that the EOIR-retained mental health professional has the necessary access to the detainee to conduct the examination.

No Private Right of Action

These guidelines and priorities are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

³In facilities not staffed by IHSC, IHSC and the FMC will work with facility medical staff, but will not control or provide direct medical care.